

#### IV. DORAVILLE IS NOT ENTITLED TO A FIRST LOCAL SERVICE PREFERENCE

The Commission relies on criteria established in *Tuck* to determine whether a community should be awarded a first local service preference.<sup>32</sup> The criteria are as follows: (1) signal population coverage; (2) the size of the suburban community relative to the adjacent city; and (3) the interdependence of the suburban community with the central city.

Cox's Petition fails to demonstrate that Doraville, which falls wholly within the Atlanta Urbanized Area, is independent from Atlanta. WBTS currently provides city grade service to 33% of the Atlanta Urbanized Area, not an insignificant percentage. As described in the attached Technical Statement demonstrates, however, once Cox relocates its transmitter closer to the central city of Atlanta, it will encompass all of the city of Atlanta with a service contour and will serve nearly 50% of the Atlanta Urbanized Area with city grade service. Moreover, as even Cox must admit, the population of Doraville is a mere 2.36% of the population of the city of Atlanta, and less than 1% of the population of Fulton and DeKalb Counties (.66%), and is essentially contiguous to and is an integral part of Atlanta, less than 15 miles away.<sup>33</sup> With Doraville's close proximity to Atlanta and WBTS's current, Atlanta-focused marketing strategy, there is no doubt that the Petition is designed to further solidify WBTS's place in the Atlanta radio market.

Doraville is not a community for allotment purposes because it is not significantly independent of Atlanta. Notably, Doraville is located in DeKalb County, which itself is

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<sup>32</sup> *Faye & Richard Tuck, Inc., KBEC, Waxahachie, Texas; Bluebonnet Radio Broadcasters, Inc., Plano, Texas; Century Broadcasting Corp. Garland, Texas; Dontron, Inc. KPBC, Garland, Texas; For Construction Permit for a New AM Station, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988) ("Tuck").*

<sup>33</sup> <http://www.ndo.com/cgi-bin/dist?place1=doraville%2C+ga&place2=atlanta%2C+ga> (13 miles).

integrally identified with Atlanta.<sup>34</sup> The county, which borders the city of Atlanta on the east, is ranked second among metropolitan Atlanta's 20 counties in total population and total labor force.<sup>35</sup> DeKalb County grew by 12.4 percent in the 1990s and is projected to rise to 13.5 percent in the next decade. Contrary to Cox's attempt to describe Doraville as an independent community that provides its residents an extensive variety of municipal services, Doraville is heavily dependent upon DeKalb County for these services. For example, fire protection services, libraries and schools all are provided by the county. Moreover, Doraville high school residents attend Cross Keys High, which is physically located in Atlanta.

Doraville is economically linked to Atlanta and is part of the Atlanta advertising market. Arbitron, for example, lists all of DeKalb County, including Doraville, as a part of the Atlanta radio market.<sup>36</sup> Advertisers simply do not view Doraville as a separate and distinct market as Cox would have the Commission to believe. Furthermore, that Doraville has a *quarterly* community newspaper, a fact cited by Cox in support of its *Tuck* showing,<sup>37</sup> clearly demonstrates the opposite point – that Doraville is dependent on Atlanta. That Doraville has newspaper published *four times a year*, which simply cannot address the suburb's need for timely local news and information, underscores Doraville's link to Atlanta, not its supposed

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<sup>34</sup> Cox filed comments opposing WPEZ(FM)'s petition to reallocate Channel 300C1 from Macon to Hampton, Georgia. While the Commission ultimately granted this petition, it was Cox that argued in that case that Hampton, which is farther from Atlanta (25 miles) than Doraville and, unlike Doraville, is located in a county that does not border the central city of Atlanta, was not significantly independent of Atlanta because it was economically linked to Atlanta through a shared advertising market and dependent upon Henry County for municipal services. Comments of Cox Radio, Inc., filed on Apr. 13, 1998, in MM Docket No. 98-18, RM-9204. Cox's comments in that proceeding seem equally applicable, if not more so, to Doraville in this case.

<sup>35</sup> [www.dekalbchamber.org/Dcoc.jsp](http://www.dekalbchamber.org/Dcoc.jsp)

<sup>36</sup> Attachment F.

<sup>37</sup> Petition at 12-13.

independence. Instead, most residents of Doraville read the Cox-owned Atlanta Journal and Constitution because they perceive themselves and their community as an integral part of the Atlanta metropolitan area.

U.S. Census Bureau statistics indicate that the mean commute time for Doraville residents is 29 minutes.<sup>38</sup> Doraville is only about 3.5 square miles, so a commute time of half an hour strongly suggests that most residents work outside of Doraville. Indeed, Metropolitan Atlanta Rapid Transit Authority (MARTA) has a subway stop with Park and Ride facilities in Doraville that residents use to commute to and from work. MARTA also operates numerous bus routes from Doraville into Atlanta.<sup>39</sup>

Finally, Doraville does not have its own phone directory. Rather, its listings are included in a directory that covers North Atlanta.<sup>40</sup> All of these facts taken together demonstrate that Doraville is not significantly independent of Atlanta to justify a first local service priority under the Commission's FM allotment priorities.

**V. THE COMMISSION SHOULD REVIEW THE WBTS PETITION UNDER ALLOTMENT PRIORITY 4, OTHER PUBLIC INTEREST MATTERS**

As discussed above, Doraville cannot be credited with a first local service under allotment priority 3 because Doraville is dependent on Atlanta for allotment purposes, and because Cox's true aim is to serve Atlanta. Rather, the Commission must attribute Doraville to Atlanta, which is already well served with transmission and reception services. As a result, the Commission must review Cox's proposal under priority 4, other public interest matters. Under allotment priority 4, the Commission considers various factors, including the number of local

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<sup>38</sup> Attachment G at 3.

<sup>39</sup> [www.itsmarta.com/getthere/stations/doraville.htm](http://www.itsmarta.com/getthere/stations/doraville.htm).

<sup>40</sup> Attachment H.

transmission services in the communities at issue, the relative size of the communities at issue, and the number of reception services in the gain and loss area.<sup>41</sup>

At the outset, the Commission should consider the impact of Cox's proposal to reallocate WBTS on Athens, GA. Athens is an important north Georgia city with a population in excess of 100,000. Athens is, of course, the home of the University of Georgia and is an important cultural center. Cox claims that Athens will remain well served by transmission services even if WBTS, one of two commercial FM allotments for Athens, is reallocated to Doraville. However, without WBTS, Athens will retain *only one* commercial FM allotment, three commercial AM stations and three non-commercial FM stations. By contrast, Atlanta alone (without counting allotments and assignments to suburban communities, which would likely double the total) has a total of 23 aural transmission services, comprised of six commercial FM allotments (all Class C or C1), twelve AM stations and five non-commercial FM stations.

The nature of the remaining Athens transmission services further demonstrates that Athens will be underserved if WBTS is reallocated away from Athens. The other commercial FM station licensed to Athens, WFSH-FM, like WBTS, has located its transmitter as far to the west as possible to maximize coverage of Atlanta, markets itself as an Atlanta station and has few ties to the Athens community. Of the three AM stations licensed to Athens, one is a daytime only operation and the other two are Class B and Class C facilities with no more than 5 kW daytime and 2.5 kW nighttime power. Of the non-commercial FM stations licensed to Athens, one is a Class A facility and the other two stations are Class C2 and C3 stations with less than maximum allowable facilities for their class, and all three stations have relatively limited coverage areas. In short, for a city with a population in excess of 100,000, Athens is – today –

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<sup>41</sup> *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 n. 8 (1982), recon. denied 56 RR 2d 448 (1984).

remarkably underserved by transmission services and reallocating WBTS to Doraville would obviously only makes matters worse. In contrast, Atlanta and its surrounding suburbs enjoy a wealth of transmission services and are hardly in need of another Class C1 allotment.

As indicated above, Cox has not provided the gain/loss study to support the WBTS move into Atlanta. The attached Technical Statement includes a gain/loss study based on a hypothetical transmitter site further to the west of the existing WBTS site. The hypothetical site provides full service-contour coverage to the city Atlanta, which, as discussed above, appears to be Cox's design. As the study demonstrates, relocating the WBTS transmitter closer to Atlanta will result in loss of reception service to communities to the east and north of Athens. These rural communities, including communities in Madison, Oglethorpe and Franklin Counties, are currently served by as few as 8 aural services. In comparison, Atlanta and the other communities in the gain area are already well served by reception services. These gain area communities are already served by as many as 44 services.

In short, the other public interest factors that the Commission considers under allotment priority 4 weigh overwhelmingly in favor of dismissing Cox's proposal for WBTS and retaining the existing allotments for Athens, GA. Reallocating WBTS away from Athens to the Atlanta suburbs would leave the important city of Athens further underserved by transmission services, while adding to an embarrassment of riches in and around Atlanta. Moreover, the reallocation of WBTS to the Atlanta suburbs would also allow Cox to move WBTS into Atlanta, which would result in significant loss area and a reduction in reception service to rural communities that are already underserved.

**VI. IF THE COMMISSION GRANTS COX'S PETITION, THE COMMISSION SHOULD CONDITION THE WBTS LICENSE ON PROVIDING A CITY GRADE SIGNAL TO ATHENS**

Cox states repeatedly throughout its Petition that the proposed change in community to Doraville will be made at the existing WBTS transmitter site.<sup>42</sup> However, nowhere in the Petition does the Cox commit to limit the WBTS transmitter site to its current coordinates in the future, or to continue to provide Athens with a city grade signal.<sup>43</sup> If WBTS were to relocate its transmitter closer to Atlanta, the relocation undoubtedly will result in loss of service to some communities. As the Commission has explained in the past, "the public has a legitimate expectation that existing service will continue."<sup>44</sup> Accordingly, the Commission will weigh this expectation "independently against the service benefits that may result from allotting a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service or both."<sup>45</sup>

Consistent with the Commission's prior pronouncements regarding the public's expectation of continued service, the Commission recently took steps to ensure that residents in a station's former community of license continued to receive service following the change in the community of license. Specifically, the Commission granted WHNS(TV) approval to change its community of license from Asheville, North Carolina, to Greenville, South Carolina, subject to the condition that the station continue to provide city grade coverage to Asheville, the station's

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<sup>42</sup> Petition at 3, 5, 6, 14, Exhibit A at 2.

<sup>43</sup> The NPRM does provides that Cox must "specify its current licensed site for Station WBTS, Athens, Georgia, for the applications for a construction permit and a license for Station WBTS, Doraville, Georgia," NPRM at ¶ 5, but the NPRM condition would not impose any further condition on the future transmitter location or operations of WBTS.

<sup>44</sup> *In the Matter of Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870, 4873 (1989) recon. granted in part, 5 FCC Rcd 7094, 7097 ¶ 19 (1990).

<sup>45</sup> *Id.*

original community of license.<sup>46</sup> The Commission also imposed a second condition requiring that the station “continue service to Asheville and its environs by way of local news and other public affairs programming.”

If, despite the fact and arguments set forth in these Comments, the Commission decides to grant Cox’s proposal to reallocate WBTS to Doraville, then the Commission should condition WBTS’s license, as the Commission did in the WHNS case, on WBTS continuing to provide city grade coverage to the community of Athens and on the WBTS programming continuing to meet the needs and interests of Athens residents. Such a condition will ensure that the needs of the Athens residents continue to be met in the future, and if Cox’s true intention is to serve Doraville from its current transmitter site, and not to move WBTS into Atlanta, then those additional conditions on the WBTS license will have no adverse impact on Cox’s operation of WBTS in the future.

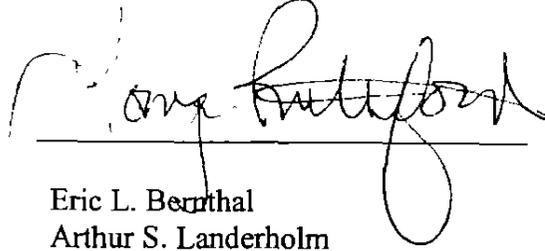
## VII. CONCLUSION

As set forth in more detail above, the Commission should reject the Cox proposal to change the community of license for WBTS from Athens, Georgia, to Doraville, Georgia. In the alternative, the Commission should condition the grant of Cox’s Petition on WBTS continuing to provide a city grade signal to the community of Athens, GA.

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<sup>46</sup> *In the Matter of Amendment of Sections 73.606(b), Table of Allotments, Television Broadcast Stations; and 73.622(b), Table of Allotments, Digital Broadcast Television Stations (Asheville, North Carolina and Greenville, South Carolina)*, Report and Order, DA 03-2479 (rel. Aug. 1, 2003).

Respectfully submitted,  
Infinity Broadcasting Corporation

A handwritten signature in black ink, appearing to read "Tonya Rutherford", is written over a horizontal line. The signature is fluid and cursive.

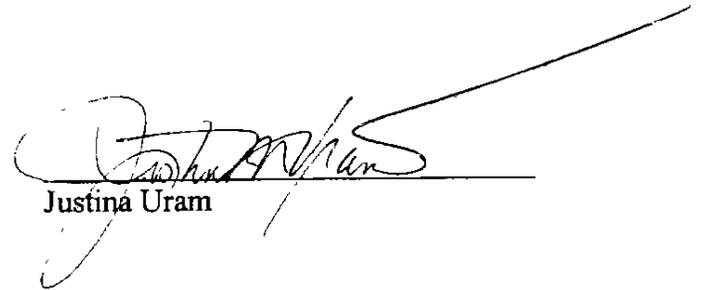
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October 27, 2003

## CERTIFICATE OF SERVICE

I, Justina Uram, hereby certify that on this 27th day of October 2003, I caused copies of the foregoing Comments of Infinity Broadcasting Corporation to be sent via first class mail, postage prepaid to the following:

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Justina Uram

# **EXHIBIT 1**

	Athens, GA Urbanized Area
	Gainesville, GA Urbanized Area
	Atlanta, GA Urbanized Area
	Atlanta, GA Urbanized Area

**WBTS(FM) ATHENS, GEORGIA  
LICENSED AND HYPOTHETICAL  
COVERAGE CONTOURS**

prepared October 2003 for  
**Infinity Broadcasting Corporation**

Cavell, Merrz & Davis Inc  
Manassas, Virginia

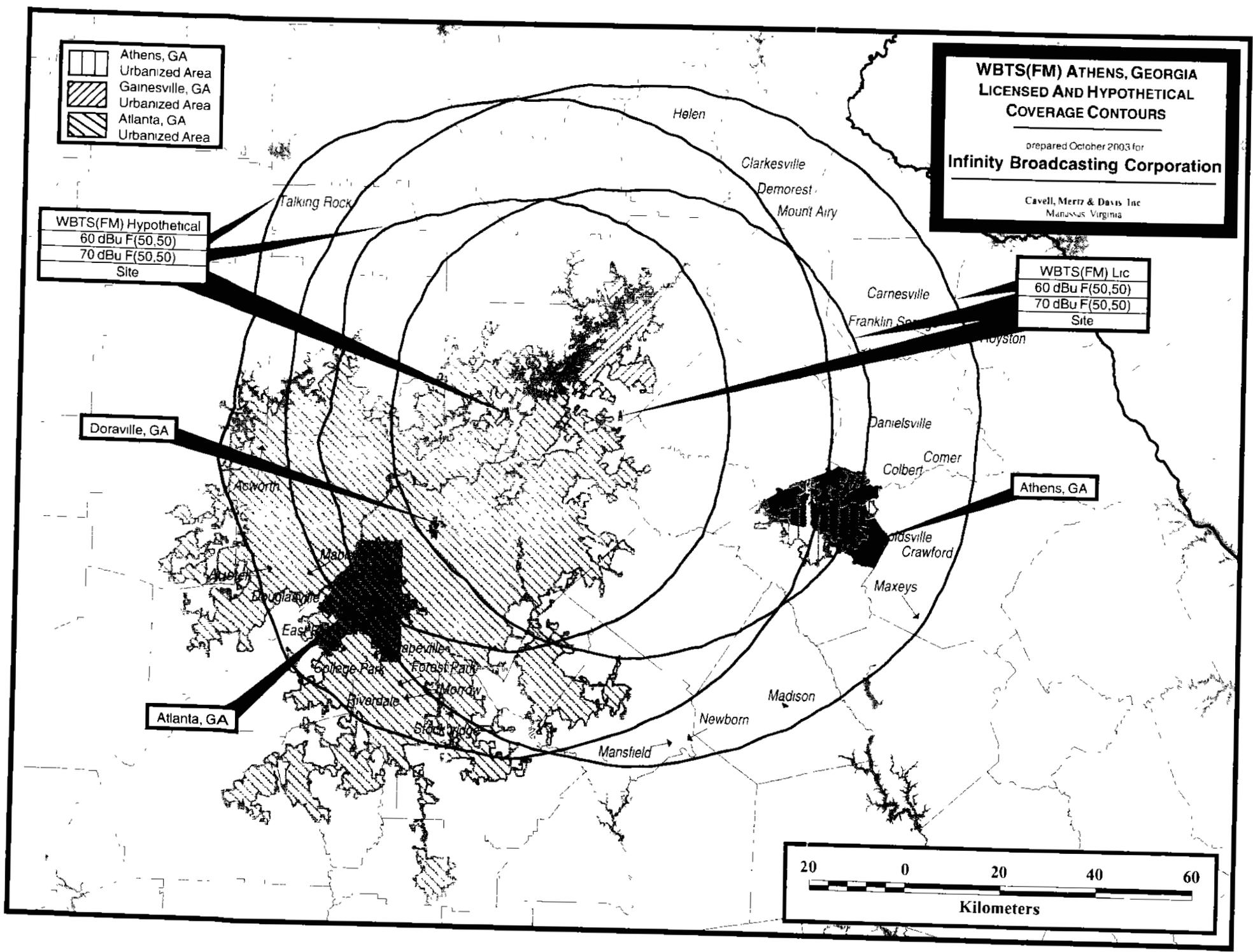
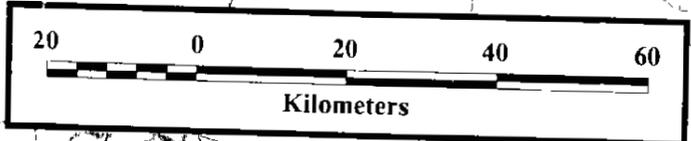
**WBTS(FM) Hypothetical  
60 dBu F(50,50)  
70 dBu F(50,50)  
Site**

**WBTS(FM) Lic  
60 dBu F(50,50)  
70 dBu F(50,50)  
Site**

Doraville, GA

Athens, GA

Atlanta, GA



Engineering Statement  
**WBTS COVERAGE OF ATHENS AND ATLANTA GEORGIA**  
prepared for  
**Infinity Broadcasting Corporation**

This Engineering Statement comments on the Notice of Proposed Rulemaking<sup>1</sup> to change the principal community of Channel 238C1 at Athens, Georgia to Doraville, Georgia. Under this proposal, station WBTS would serve Doraville on channel 238C1 with no change in its technical facility. As no change in the WBTS technical facility is contemplated in the proposal, no “gain” or “loss” areas will result. In this Statement, we explore a hypothetical transmitter relocation, and evaluate the resulting “gain” and “loss” areas and population, that would be possible *only* if the allocation of Channel 238C1 at Athens, Georgia were changed to a community closer to Atlanta, in this case, Doraville, Georgia

**Hypothetical Site**

Given that radio stations generally tend to relocate toward larger, metropolitan marketing areas, we presume that the change of principal community is to relocate the WBTS facility nearer to Atlanta, Georgia under the provisions of the FCC’s contour protection rules (see §73.215).

Considering the allocations situation for WBTS, we selected the following hypothetical site for evaluation. The site is uniquely described by the geographical coordinates:

34° 07' 32" North Latitude  
84° 06' 55" West Longitude

Should the proposed change to the table of allotments be approved, this hypothetical site, which represents a move of 24 kilometers (14.9 miles) closer to Atlanta and the creation of several shortspacings, would be permissible under the FCC Rules. Specifically, the site would continue to be shortspaced to stations WLTM (Channel 235C1, Atlanta) and WKLS (Channel 241C0, Atlanta) which are presently “grandfathered” under §73.213(a)(4) and thus not a limiting factor. New

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<sup>1</sup>MB Docket No. 03-190 (RM-10738) Amendment of Section 73.202(b) FM Table of Allotments, FM Broadcast Stations (Athens and Doraville, Georgia)

Engineering Statement  
**WBTS COVERAGE OF ATHENS AND ATLANTA GEORGIA**  
 (page 2 of 4)

shortspacings to WASZ (Channel 238A, Ashland, Alabama<sup>2</sup>), WSRM(CP)(Channel 237A, Coosa, Georgia), WATG (channel 239A, Troon, Georgia), and the channel 238A allocation in Hobson City, Alabama would be permissible through the use of contour protection. A directional antenna pattern is necessary to prevent prohibited contour overlap with these stations from the hypothetical site, which meets all pertinent spacing requirements of §73.215(e).

**Gain and Loss Areas**

The present and hypothetical service contours are shown in the attached map. These contours were prepared using U.S.G.S. 3 arc-second terrain data, FCC field strength to distance curve algorithms and 72 evenly spaced radials in accordance with §73.313 of the FCC Rules. A digitized mapping program along with 2000 U.S. Census data were utilized to evaluate the area and population within the present and hypothetical contours:

<u>Description</u>	<u>Licensed WBTS</u>	<u>Hypothetical WBTS</u>
Within 60 dBu Contour	16,400 km <sup>2</sup> 3,275,724 people	14,100 km <sup>2</sup> 3,726,138 people
Within 70 dBu Contour	7,799 km <sup>2</sup> 1,541,962 people	6,528 km <sup>2</sup> 2,278,433 people
Athens Urbanized Area Within 70 dBu Contour	171.4 km <sup>2</sup> 90,857 people	0 km <sup>2</sup> 0 people
Gainsville Urbanized Area Within 70 dBu Contour	239.0 km <sup>2</sup> 88,019 people	239.0 km <sup>2</sup> 88,019 people
Atlanta Urbanized Area Within 70 dBu Contour	1,597 km <sup>2</sup> (31.1%) 1,042,428 people	2,517 km <sup>2</sup> (49.1%) 1,962,936 people

As is shown in the attached map, the hypothetical relocation will result in the loss of service in some areas, and the gain of service in others.

<u>Description</u>	<u>Loss Area</u>	<u>Gain Area</u>
Within 60 dBu Contour	4,344 km <sup>2</sup> 197,418 people	2,049 km <sup>2</sup> 647,832 people
Within 70 dBu Contour	2,830 km <sup>2</sup> 213,013 people	1,560 km <sup>2</sup> 949,484 people

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<sup>2</sup>MB Docket No. 03-77 (RM-10660, DA 03-816) proposed relocation of Ch. 238A at Ashland, AL to Hobson City, AL

Engineering Statement  
**WBTS COVERAGE OF ATHENS AND ATLANTA GEORGIA**  
 (page 3 of 4)

The following communities, presently encompassed by the entire WBTS 60 dBu predicted service contour, would be outside of that contour should the station relocate to the hypothetical site.

<u>Community</u>	<u>Quantity of AM 2 mV Signals</u>	<u>Quantity of FM 60 dBu Contours</u>
Clarksville, Georgia	5	9
Demorest, Georgia	5	9
Mount Airy, Georgia	5	10
Carnesville, Georgia	3	9
Royston, Georgia	4	7
Danielsville, Georgia	5	8
Comer, Georgia	4	9
Colbert, Georgia	6	7
Arnoldsville, Georgia	5	6
Crawford, Georgia	3	6
Maxeys, Georgia	2	6
Madison, Georgia	1	8
Newborn, , Georgia	1	12

The following communities would receive new 60 dBu service from the hypothetical WBTS.

<u>Community</u>	<u>Quantity of AM 2 mV Signals</u>	<u>Quantity of FM 60 dBu Contours</u>
Stockbridge, Georgia	10	17
Austell, Georgia	23	19
Riverdale, Georgia	22	19
Acworth, Georgia	7	15
Morrow, Georgia	16	20
Forest Park, Georgia	22	20
Talking Rock, Georgia	2	5
College Park, Georgia	23	21
East Point, Georgia	24	20
Douglasville, Georgia	23	19

Engineering Statement  
**WBTS COVERAGE OF ATHENS AND ATLANTA GEORGIA**  
(page 4 of 4)

**Conclusion**

Although relocation of the WBTS transmitter is not specifically proposed at this time, the change of principal community to Doraville, Georgia would ease the relocation of the WBTS transmitter (by some 24 kilometers) as a "minor change" under the Rules some time in the future. Such a change would result in the loss of 60 dBu service in areas presently being served by only 8 aural services. Much of the "gain" area, on the other hand, is served by as many as 44 AM and FM broadcast stations.

**Certification**

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction on behalf of Infinity Broadcasting Corporation and that it is true and correct to the best of his knowledge and belief. Daniel G. Ryson is employed by the firm of Cavell, Mertz & Davis, Inc. and has submitted numerous engineering exhibits to the Federal Communications Commission. His qualifications are a matter of record with the Commission.



Daniel G. Ryson  
October 27, 2003

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**ATTACHMENT A**

*(Compact Disk Omitted)*

# **ATTACHMENT B**



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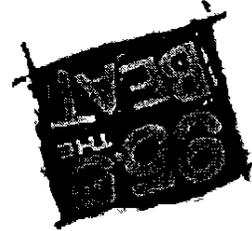


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With a picture?

#### HE SAYS SHE SAYS

What's your take on a boyfriend calling their ex at 4:30 a.m. drunk? He was visiting his buddies back home, while I went away with my friends for the weekend. Did I mention she just so happens to live "back home." How should I handle this?



...to read the answer to this question, click here



...to read the answer to this question, click here

#### BOO! WHICH OF THESE RANKS AS THE SCAREST DATING FAUX PAS?

- Boo! Which of these ranks as the scarest dating faux pas?
- Calling your date by the wrong name
- Having your credit card rejected when paying for dinner
- Getting embarrassingly

Hi Lavalite!  
I met him at Lavalite approximately 4 months ago. He contacted me by phone the day before our date and it instantly felt like I'd known him my whole life. Meeting each other just reinforced any feelings we each had! He's so beautiful and intelligent. I seriously think I've found "The One"  
Many Thanks!!

Gemma  
[More Success Stories](#)

- drunk
- Booking two dates in one night and getting caught.

**DREAM DATER**

**This week's:** A quiet evening watching the stars in the sky, surrounded by the symphony of nature  
Simple, serene and seductive

Submitted by [ZXCVM](#)



Results 102 votes

**FAVORITE NOTES**

**Levlife notes**

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